
**2003 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD V: PRINCIPLES OF
COMMON LAW**

Wednesday, 17 December 2003



Head V: PRINCIPLES OF COMMON LAW

TEST PAPER

17 December 2003

Instructions to Candidates:

- 1. The duration of the examination is 2½ hours (which includes 30 minutes dedicated reading time).**
- 2. You are not permitted to bring into the examination any books, documents or other materials.**
- 3. At the commencement of the 30 minutes reading time, you will be supplied with 10 questions, together with an English dictionary and a copy of Mozley and Whiteley's law dictionary by J. E. Penner.**
- 4. You will be permitted 30 minutes to consider the test questions, choose 4 questions upon which to be examined (one from each of Parts A, B, C and D of the test paper) and make notes on the questions supplied.**
- 5. At the expiry of the 30 minutes reading time, you will be called before a panel of between 2 and 4 Examiners who will assess your understanding of the topic or subject concerned.**
- 6. Where a question has two sections, you must answer both sections of the question. Each question is worth 25 marks.**
- 7. Wherever possible, support your answer with reference to decided cases and legislation.**
- 8. During the oral examination, you may consult only the notes that you have made during the 30-minute reading time on the questions supplied.**
- 9. Do not take this question paper with you when you leave the examination room.**

2003 Overseas Lawyers Qualification Examination

Head V: Principles of Common Law

Part A (Constitutional Law & Introduction to Legal System)

Question 1 (25 marks)

(This question has 2 sections, (a) and (b). Section (a) consists of 3 sub-questions, answer all of them and then answer section (b))

Section (a)

1. **Alan** has borrowed HK\$100,000 from **Bunty** at 10 per cent interest per annum. One year has passed and **Alan** has neither returned the original sum nor the interest. **Bunty** wishes to sue **Alan**. **In which court can this case be heard?**
2. **Andy** kills **Bob** in a fight. **Andy** is subsequently arrested and charged with murder by the police. **In which court will the proceedings be first heard and which court will impose the sentence if Andy is found guilty?**
3. **Brinjol** succeeds in her defamation action against **Simpleton** in the Court of Appeal. The Court of Appeal awards **Brinjol** HK\$500,000 in damages. **In which court can Simpleton appeal against this decision? What would be the basis for allowing Simpleton to appeal?**

Section (b)

1. An ordinance provides that “it is an offence for prostitutes to solicit in a street”. **Sylvie**, a prostitute, is arrested by the police while trying to attract a passerby from her window. Her defence is that she is not caught by the ordinance because she was physically not present in the street. **How would you interpret this provision of the ordinance? Do you think that Sylvie would be liable?**
2. **Chan** was driving along Tai Po Road. He hit a pedestrian. He momentarily stopped his car and then drove off. He was chased by the police and arrested for breach of a traffic law which provides that “a driver of a motor vehicle must stop after an accident.” **Chan** argued that he had not breached the law as he stopped and then proceeded. **Which rule of statutory interpretation would apply?**

(See over the page for a continuation of Part A)

Question 2 (25 marks)

Article 8 of the Basic Law declares that “the laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region.”

Critically examine the above statement.

End of Part A

Part B (Law of Contract)

Question 3 (25 marks)

Cheng owns a house in Deep Water Bay. He enters into a contract with **Fong**, a building contractor, for **Fong** to build a kitchen extension to **Cheng**'s house at a cost of HK\$900,000. **Cheng** and **Fong** agreed the work would take 6 months and **Cheng** would pay **Fong** one third of the cost at the start of the contract and the balance upon completion.

Fong started work in June and by 1 September had completed only 20% of the work. Then, on 1 September, there was a freak lightning storm and the house was burnt to the ground. **Advise Cheng and Fong of their respective rights and obligations. Would your advice be different if Fong had in fact completed 50% (rather than 20%) of the work?**

Instead of the house being destroyed by lightning, the rate of inflation had increased so much that by September **Fong** realised that it would cost him HK\$1,500,000 to complete the kitchen extension. So he stopped work and demanded **Cheng** pay him HK\$900,000 in addition to the original contract sum. **What can Cheng do?**

Question 4 (25 marks)

Chung owns an antiques shop on Hollywood Road.

Ko went past the shop one day and spotted a vase on display in the shop window described as being of early Ming Dynasty and priced at HK\$15,000. **Ko** bought the vase from **Chung**. Both **Chung** and **Ko** believed that the vase had been accurately described as early Ming Dynasty. However, the vase turned out to be an excellent fake.

There was another vase on display in the shop window offered for sale at HK\$8,000. **Li**, believing that it was of early Ching Dynasty, agreed to buy it. In fact, the vase was made in the late Ching Dynasty and accordingly, was worth much less than HK\$8,000. **Chung** knew of **Li**'s mistake, but said nothing.

Poon also walked into the shop on the same day and offered **Chung** HK\$500,000 for a Han Dynasty bronze cup. **Chung** agreed to sell it to him. **Poon** offered to pay by cheque, which **Chung** refused to accept without some proof of identification. **Poon** had pretended to be **Dr John Chan** and gave his address as 48 Deep Water Bay. **Chung** checked the telephone directory and found that **Dr Chan** lived at the address given. **Poon** also produced a Deep Water Bay Golf Club membership card containing **Poon**'s photograph but with the name "**Dr John Chan**" inscribed on the card. **Chung** let **Poon** purchase the bronze cup. **Poon** immediately sold the bronze cup to **Wong** before **Chung** was advised by his bank that the cheque had been dishonoured.

Looking at the three sales described above, what would you say to the parties in respect of their respective contractual rights and liabilities, and what remedies are available to each of them?

End of Part B

Part C (Introduction to Law of Torts)

Question 5 (25 marks)

In March 2003, **Jenny** became extremely ill with flu-like symptoms. She decided to visit a doctor, **Dr Fitzpatrick**. Upon seeing her condition, the doctor prescribed a dose of new antibiotics, given only to 1.5% of patients. **Jenny** had never been prescribed antibiotics before but she did not tell the doctor this, nor did the doctor ask. The antibiotics did not improve **Jenny**'s condition, and that night her symptoms worsened and she developed a high fever. She phoned a friend to take her to hospital. It was raining heavily and the car skidded due to her friend's negligence, injuring both of them. **Jenny** had not been wearing her seatbelt. An ambulance rushed her to the emergency ward of the hospital where a surgeon operated on her immediately. Unknown to the surgeon, she had had an adverse reaction to the antibiotic course prescribed by **Dr Fitzpatrick**. As a result, the surgery performed by the surgeon caused **Jenny**'s condition to deteriorate further. Vital organs, including her liver and kidney, had been seriously damaged by the antibiotics and surgery. According to medical practitioners she now has only six to eight months to live.

Jenny wants to sue the hospital and **Dr Fitzpatrick**. **Discuss her chances of success with reference to the relevant cases.**

Question 6 (25 marks)

Jane was working as a receptionist at XY General Hospital. The reception area was an enclosed area. The counter had a glass screen extending up to 20 inches. **John**, a mentally disturbed person, visited the hospital. He told **Jane** that he was suffering from acute anxiety and depression and wanted to see a doctor straight away. **Jane** asked **John** to produce his identity card. This made **John** very agitated. He began shouting and said, "You think I'm crazy to come here without my identity card?" **Jane** said, "Please do not get angry, I am only doing my duty." This made **John** angrier. He took out a bottle from his bag. **Jane** became very concerned as she suspected that the bottle contained some dangerous chemical. She feared for her safety and the safety of the patients in the waiting room. She came out from behind the counter and tried to take the bottle from **John**. However, **John** opened the bottle, spraying its contents on her. **Jane** sustained serious injuries to her face and body. **Jane** now wishes to sue XY General Hospital for their failure to provide a safe work environment.

Discuss whether XY General Hospital is liable or not.

(See the next page for a continuation of Part C)

Question 7 (25 marks)

“To impose duty in negligence, in addition to foreseeability of damage, there must also exist between the parties a relationship of proximity and neighbourhood and the situation should be one in which the court considers it fair, just and reasonable that the law should impose duty and there should be no policy considerations against imposing such a duty.”

Explain and comment on the above statement.

Question 8 (25 marks)

Julia is a famous actress who is standing in a local election. Cine News published a story about her under the caption “Film star turned politician”. Cine News is published in Chinese and is known for publishing sensational stories. Because of such stories, Cine News is circulated widely in Hong Kong, China and overseas.

Cine News stated as follows: **Julia** is not being offered contracts to act in any movies because the conservative society of Hong Kong does not like a loose character like herself. **Julia** has only been able to obtain film contracts by sexually obliging film producers and directors. She has participated in a sexual orgy, widely reported by local media. She is married to a very rich businessman, yet she does not live with him. Every night she goes out with a different man. She has such a bad reputation that no producer or director wants to risk giving her a role in his films. She has no doubt accumulated quite a fortune, and now she is using her ill-gotten gains to entice voters.

As a matter of fact, the story is not true about **Julia**, although it is true about her sister, **Juliana**, who is also an actress. **Julia** is very unhappy. She writes to Cine News demanding that they publish a retraction, which they have refused to do.

Advise Julia as to whether she has any cause of action to sue Cine News in defamation. Give reasons for your answer.

End of Part C

Part D (Criminal Law)

Question 9 (25 marks)

Ah Man and **Ah Ling** were drinking in a bar one night. All of a sudden, **Ah Man** proposed to **Ah Ling**: “Let’s break into **Chan**’s flat and take his flat screen TV.” **Ah Ling**, who just got out of prison, decided not to reply to **Ah Man** or to tell the police about **Ah Man**’s plan. Later, **Ah Man** bumped into **Ah So**, another former jail mate, and persuaded **Ah So** to join him in his plan instead.

Next day, when **Ah So** was accompanying **Ah Man** on the bus and on their way to **Chan**’s flat, **Ah So** told **Ah Man** he no longer wanted to go through with the plan. **Ah Man** threatened **Ah So** that, unless **Ah So** went with him to **Chan**’s flat, **Ah Man** would cut up **Ah So**’s wife. Reluctantly, **Ah So** went with **Ah Man**, carrying the crow bar and screwdrivers. However, **Ah Man** could not enter **Chan**’s flat because he found the place wired with several burglar alarms.

Advise Ah Man, Ah Ling and Ah So of their criminal liability, if any.

Question 10 (25 marks)

Chow went into a store to see if they stocked Tiger beer. He found both bottled and canned Tiger beer. Seeing no one about, he put a can into his coat. On the way out of the store he noticed that he might have been filmed by security cameras fitted in the store and returned the can onto the shelf. **Chow** then saw on the next shelf a bottle of Macdonald whiskey, which had been underpriced. It was HK\$100 cheaper than all the other bottles of Macdonald whiskey. He took it to the checkout where the store staff charged the marked price. Outside the store, **Chow** drove his car to the exit intending to use a foreign coin to operate the barrier. In fact, the mechanism was not working and an attendant waved **Chow** through.

Advise Chow of his criminal liability, if any.

End of Test Paper